



Costs Decisions

Site visit made on 28 April 2021

by Rory MacLeod BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 May 2021

Costs application in relation to Appeal Ref: APP/R0335/W/20/3262270 Land at rear of White House Farm, North Street, Winkfield SL4 4TE

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The first application is made by Mr Brian Hunter for a full award of costs against Bracknell Forest Borough Council.
 - The second application is made by Bracknell Forest Borough Council for a full award of costs against Mr Brian Hunter.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for change of use from B8 (storage) to C3 (residential). Proposed erection of two bungalows with accommodation in the roof voids and associated parking after demolition of existing storage building facilities.
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Decisions

1. The applications for an award of costs are refused.

Reasons

The applicant's claim

2. The applicant submits that the Council has acted unreasonably on substantive grounds by refusing to issue an outline planning permission. This was after providing written confirmation that the application is acceptable, being in accordance with relevant policy considerations, and by unnecessarily requesting further surveys and reports, unconnected with the Appearance, Scale and Layout of the buildings, which could have been provided at the reserved matters stage. It is submitted that the Council's behaviour has resulted in unnecessary costs to research, prepare and lodge an appeal.
3. It will be evident from the main decision that I have concluded that the submission of an Ecological Impact Assessment and Survey at the outline planning stage is warranted in this instance. The applicant has quoted from the McClean¹ case on outline planning proposals, "*that there is at least one such form that is acceptable is implicit in the grant of planning permission.*" However, it is the case that there may not be at least one form of development that is acceptable, or at least that the layout submitted for approval may significantly compromise appropriate measures arising from the survey and assessment, notwithstanding that the proposal may be regarded as acceptable in relation to Green Belt and other policy considerations. I acknowledge that the applicant has not applied for a full planning permission, in which a greater

¹ McClean Homes (East Anglia) Ltd v Secretary of State for the Environment, Transport and the Regions and Chelmsford BC [1999] PLCR 372, the Deputy Judge, Mr George Barlett QC.

number of matters may need to be resolved before a decision can be issued, but the outline planning permission establishes acceptability of the principle of the development. Therefore, any issues that may impact on that principle need to be resolved at the outline stage.

4. The Council provided opportunity for this information to be submitted beyond the statutory 8 week period for determining the application and pointed out that the need for this information had been made on the previous application that had been withdrawn. The applicant has referred to the absence of a decision as an “*impasse*”, but I do not consider that the Council has prevented or delayed development which should clearly have been permitted.
5. I have noted that the applicant’s proposal is not for a Major development or development subject to an Environmental Impact Assessment, that it relates to a small brownfield site and that the applicant has had a dialogue with the Council on other outline applications to establish consistency in the Council’s approach. But each case needs to be considered on its individual planning merits, and it falls to the Council in the first instance, as local planning authority, to establish the relevant planning considerations for each case.

The Council’s claim

6. The Council contend that as the applicant is professionally represented it should have been understood that the impact of any development on habitats and biodiversity is a material consideration that requires resolution prior to any planning permission being granted, outline or otherwise, and that the appeal has led the Council to incurring unnecessary expense through the preparation of appeal and costs statements.
7. Regardless of professional representation, an applicant is entitled to question the need for additional information, particularly at an outline stage when the principle of development is being established and the applicant is trying to limit expenditure in establishing that principle. The issue is a matter of planning judgement. Having regard to the extent of hard surfacing at the appeal site, it was not unreasonable to question the need for submission of ecological information at the outline application stage. The challenging of the Council’s judgement on this through submission of an appeal does not in itself amount to unreasonable behaviour. Although the main decision has been decided in the Council’s favour, the applicant’s case on timing for the submission of requested information has some merit and may be appropriate in other site circumstances.
8. It has not been demonstrated that the Council has incurred unnecessary expense beyond normal defence of its planning judgements in the appeal process.

Conclusion

9. Planning Practice Guidance (PPG) advises that irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and therefore caused the party applying for costs to incur unnecessary expense in the appeal process. The disagreement between the parties on the timing of submission of ecological information clearly commenced in the application process, but it has carried through to the appeal stage.

10. The applicant is entitled to appeal against non-determination and the Council has an obligation to respond to this. Ordinarily, each party bears their own costs as an award may only be made in relation to unreasonable behaviour. The issue in question in this instance is a matter of planning judgement. Such exercising of planning judgement will not always be agreed at the application stage. In this case, neither the questioning, nor the defence of that judgement at the appeal stage, has amounted to unreasonable behaviour.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Rory MacLeod BA(Hons), MRTPI

INSPECTOR